IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.178 OF 2002

The Brihanmumbai Municipal Corporation, a Statutory authority duly constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, through the General Manager, Brihan Mumbai Electric Supply and Transport Undertaking having his office at BEST Bhavan, BEST Marg, Mumbai-1. ....Petitioner

V/s.

1. The General Secretary
   BEST Workers Union,
   42, Kennedy Bridge,
   Mumbai-400 004.

2. Nazir Ismail Inamdar,
   Ex-Bus Driver No.96246,
   C/o BEST Workers Union,
   42, Kennedy Bridge,
   Mumbai-400 004. ....Respondents

Mr.S.K. Talsania i/b Crawford Bayley & Co. for the Petitioner.

Ms.Neeta Karnik for Respondent No.2.

CORAM : S.J. VAZIFDAR, J.
DATED : 22ND NOVEMBER, 2004.

P.C. :

1. The Petitioner seeks an order to quash and

set-aside the judgment and order of the Labour Court dated 13th December, 2000 and/or the judgment and order of the Industrial Court dated 26th September, 2001 which confirmed the judgment and order dated 13th December, 2000.

2. Respondent No.2 was employed as a bus driver by the Petitioner. Respondent No.1 is the representative and approved union of the employees in the transport section of the Petitioner and represented Respondent No.2 before the Labour Court and the Industrial Court.

3. Respondent No.1 had filed an application under Sections 78 and 79 of the Bombay Industrial Relations Act for reinstatement of Respondent No.2. By the impugned judgment and order dated 13th December, 2000, the Labour Court directed the reinstatement of Respondent No.2 in service without back wages but with continuity of service. The Petitioner and Respondent No.1 filed appeals against the judgment and order dated 13th December, 2000. The Petitioner filed an appeal challenging the order of reinstatement and Respondent No.1 filed an appeal challenging the order in so far as it denied Respondent No.2 back wages. The two appeals were

disposed of by the impugned judgment and order dated 26th September, 2001 by the Industrial Court.

4. The Petitioner served a charge-sheet on Respondent No.2 under Standing Orders (Transport Section) No.20 (j) which reads as under :-

> "20. The following acts or omissions on the part of an employee shall amount to misconduct :-
>
> .....
>
> (j) habitual or gross neglect of work or habitual or gross negligence."

. The charge-sheet against Respondent No.2 was in respect of an accident that occured on 5th April, 1997 while Respondent No.2 was driving a bus on route No.45/1. The bus was operated from the Mantralaya Bus Stop. The bus proceeded from Videsh Sanchar Bhavan towards Hutatma Chowk. In other words, the bus proceeded from the south to the north. It was required to take a right turn around the Videsh Sanchar Bhavan and proceed towards Hutatma Chowk. The turn involved was of about 150 degrees. In other words, though it was not a "U" turn in the strict sense it involved a complete change of direction - in the opposite direction.

5. There was a traffic signal at the turn. The bus hit a pedestrian at the traffic crossing manned by the signal. The pedestrian unfortunately expired on the next day in hospital.

6. On behalf of the Petitioner, it was contended that the fact that the pedestrian expired as a result of the accident itself establishes that the bus was driven in rash and negligent manner. It was further contended that the pedestrian was hit on the left side of the bus while he was proceeding from the right side of the bus to its left side. Thus, it was contended, Respondent No.2, had if he was driving cautiously, adequate time to prevent the accident.

7. An enquiry was held and an order dated 29th September, 1997 was passed by the Enquiry Officer, the Senior Traffic Officer, dismissing Respondent No.2 from the services of the Petitioner with effect from the date of the order.

8. The Enquiry Officer proceeded on the basis that the traffic signal did display the green light for vehicular traffic. He however held that the same was of no assistance to Respondent No.2 as every bus driver should drive a bus very slowly and carefully

and that Respondent No.2 had not done so as a result whereof the accident took place. The Enquiry Officer further held that Respondent No.2 drove the bus at a speed higher than the "required speed". He came to this conclusion on the basis that there were brake-marks of the rear tyre on the road. He also supported this reasoning on the basis that there was a board at the site of the accident appealing to drivers of the Petitioner to take care of the pedestrians while taking a "U" turn. For this reason, the Enquiry Officer dismissed Respondent No.2 from the service of the Petitioner. This order was challenged by Respondent No.1 before the Labour Court in Application (BIR) No.39 of 1998 which was disposed of by the impugned judgment and order dated 13th December, 2000.

9. The Labour Court by the impugned judgment and order dated 13th December, 2000 recorded the fact that there were no allegations in respect of the fairness of the enquiry. This fact was also recorded by the Industrial Court in the impugned judgment and order dated 26th September, 2001.

10. Neither party led any evidence before the Labour Court. The Labour Court held that there was no evidence on record that the bus was driven in a rash

and negligent manner. It was held that the pedestrian crossed the road suddenly and Respondent No.2 in fact applied the breaks immediately. It was held that it was a pure accident beyond the control of Respondent No.2. The Labour Court also relied upon certain other facts in favour of Respondent No.2. For instance, the criminal case in which Respondent No.2 was accused of an offence under Section 304 (A) of the I.P.C. was dismissed. It was also noted that this was the first instance of misconduct of Respondent No.2 after he joined the service of the Petitioner. Ultimately it was held that the punishment of dismissal from the service was not warranted but that some punishment ought to be awarded in order to ensure that vehicles are driven with care and caution in future. In these circumstances, the Labour Court reinstated Respondent No.2 without back wages but with continuity of service.

11. As stated above, the appeals against the judgment and order by the Petitioner and Respondent No.1 were dismissed by the impugned judgment and order dated 26th September, 2001. The Petitioner has challenged the said order in this Writ Petition in so far as it upheld the order of the Labour Court granting reinstatement. The Respondents have however,

not challenged the order dated 26th September, 2001 in in so far as it upheld the refusal of back wages.

12. I find it difficult to hold that either of the impugned judgments and orders are perverse or totally unsustainable. The least that can be said in favour of the Respondents is that two views were possible. For this reason and for the reasons I shall hereafter state, I do not find that interference with the impugned judgments and orders is warranted.

13. Before dealing with the facts which have convinced me to hold that the judgments and orders are not perverse, it is necessary to deal with certain aspect raised by Mr.Talsania. Mr.Talsania, submitted that in both the impugned judgments and orders, reliance was wrongly placed on the fact that Respondent No.2 had a good service record, as Respondent No.2 had only served the Petitioner as a driver for five months before the accident took place. For the purpose of this judgment, it is not necessary to take this fact into consideration in favour of Respondent No.2. It is not necessary therefore for me to deal with this aspect of the matter.

14. The fact that Respondent No.2 was acquitted

in the criminal case, also does not necessarily establish that the finding of the Enquiry Officer are incorrect. The nature of the two proceedings are distinct. I therefore will not rely upon the same for the purpose of this judgment.

15. There is however nothing on record to indicate that there was either any breach of any statutory duty, rule, regulation or enactment on the part of Respondent No.2 while driving the bus when the accident took place. Nor is there anything to indicate clearly that Respondent No.2 was guilty of rash and negligent driving. I must hasten at this stage to add that these observations are related to the record before me. They obviously therefore cannot have any bearing in any proceedings that may be adopted by the heirs of the victim of the accident in any other proceedings. In his statement before the Accident Inspector Respondent No.2 stated that when the bus reached the site of the accident, the signal was green for vehicular traffic. In his cross-examination by the Enquiry Officer, the conductor also stated that the traffic signal showed a green light for the vehicles. This testimony remained unrebutted. The order of dismissal passed by the Enquiry Officer as well as the impugned judgments and

orders, proceeded on the basis that the traffic signal was green for vehicular traffic. I must therefore proceed on the basis that at the time of accident took place, Respondent No.2 had the right of way.

16. It is further clear that Respondent No.2 had very little time to react when he noticed that the pedestrian is acrossing the road. The fact stressed by Mr.Talsania that the pedestrian was hit by left side of the bus while proceeding from the right is not against Respondent No.2. There is nothing that suggests that the vehicle was driven at such a high speed over the prescribed speed limited. In fact apart from a bald assertion by the Enquiry Officer that Respondent No.2 drove the bus at a "high speed than the required speed" there are no details or even suggestions as to what the "high speed" or the required speed was.

17. The situation that arises therefore is that there is nothing to suggest that Respondent No.2 drove the bus rashly or negligently. In the circumstances, it cannot be held that the findings of the impugned judgments and the orders are perverse or unsustainable.

18. I do not for a moment suggest that merely because an employee of the Petitioner follows traffic rules, it must in all cases be held that he cannot be guilty of Standing Order No.20 (j). With this aspect of the matter however, I am not concerned in the present case.

19. There was some dispute between the counsel regarding the import of the words in the order "but with continuity of service". I do not think that the order purported to create in favour of Respondent No.2 a right which he did not have at the time of termination of service. The question in fact in this regard did not even arise before the Labour Court or the Industrial Court. Continuity of service however, indicates that Respondent No.2 would be entitled to all rights, other than back wages, had his services not been terminated on 29th September, 1997.

20. The Petition is therefore dismissed. There shall be no order as to costs.

. Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer of this Court.